

CRS Report for Congress

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Elections Reform: Overview and Issues

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Summary

Since the November 2000 Presidential election, previously obscure details of voting and vote counting have become the focus of ongoing public attention and legislative action at the state and federal levels. Some voting improvements were made before the 2002 election cycle and both sessions of the 107th Congress considered and debated federal election reform legislation. The Help America Vote Act (HAVA, P.L. 107-252) was enacted in October 2002. The act created a new federal agency with election administration responsibilities; set requirements for voting, voter-registration systems, and certain other aspects of election administration; and provided federal funding. However, it did not supplant state and local control over election administration. Issues for the 108th Congress included funding, establishment of the new agency, and implementation by the states. Those issues remain for the 109th Congress with the addition of compliance issues now that the January 2006 deadline for states to meet HAVA requirements has passed, as well as the controversy over paper audit trails for electronic voting systems. Several bills have been introduced to address those and other issues. This report will be updated periodically to reflect new developments.

Voting Systems and Election Administration

Elections in the United States are administered at the state and local level, and the federal government had not historically set mandatory standards for voting systems, nor had it provided funding to state and local jurisdictions for the administration of elections. HAVA changed that. While initial reactions after the 2000 election had tended to focus on technological fixes such as eliminating punchcards, a consensus emerged subsequently that the issues, and the solutions needed, were more complex and often involved trade-offs among diverse goals. HAVA reflects those developments — it funded replacement of punchcard and lever systems but also broader improvements in election administration.

Kinds of Voting Systems. Currently, five technologies are used — paper ballots, lever machines, punchcards, optical scan, and direct recording electronic (DRE) systems. Most states use more than one kind. Each system has advantages and disadvantages with respect to error rates, cost, speed, recounts, accessibility to disabled persons, and other characteristics. Differences in actual performance in elections are difficult to measure accurately and depend on many factors, such as the design and condition of the system, the familiarity of voters with it, the complexity and design of the ballot, local standards and practices, and the level of competence and preparation of officials and pollworkers.

There is no consensus on whether any one technology is best, although use of optical scan and DRE systems has been increasing for several years. States have different practices and requirements, such as whether the full ballot must be displayed on one page, whether votes are tabulated in precincts or centrally, whether straight-ticket voting is allowed, and how accessibility requirements are to be met. Local jurisdictions also differ in how they configure and use the systems to meet local needs. HAVA does not require any particular voting system, but it sets requirements that influence what systems election officials choose. Beginning in 2006, systems used in federal elections must provide for error correction by voters, manual auditing, accessibility, alternative languages, and error-rate standards. Systems must also maintain voter privacy and ballot confidentiality, and states must adopt uniform standards for what constitutes a vote on each system.

Electronic Voting Machine Controversy. The HAVA requirement for accessible voting systems (at least one per polling place) and other factors have begun to drive states to adopt DREs. However, controversy exists about the security of those systems. Some experts believe that the problem is serious enough to require changes in the systems before they are more widely adopted, ranging from more sophisticated computer security to the printing of paper ballots that would be verified by the voter and hand-counted if the election results were contested. Others believe that procedural and other safeguards can make DREs sufficiently safe from tampering, that use of printed paper ballots would create too many problems, and that the controversy risks drawing attention away from the demonstrated utility of DREs in addressing known problems of access to and usability of voting systems. HAVA requires a paper audit trail for the voting system, but not paper ballots. However, several states have instituted paper-ballot-trail requirements. The Senate Rules and Administration Committees held a hearing on the issue on June 21, 2005. See also CRS Report RL33190, *The Direct Recording Electronic Voting Machine (DRE) Controversy: FAQs and Misperceptions*.

Federal Funding. A central issue has been what role the federal government should play in addressing the concerns that have been raised about voting systems, particularly with respect to funding and standards. HAVA authorizes \$3.86 billion in funding for programs to replace equipment, improve election administration, improve accessibility, recruit pollworkers, and perform research and pilot studies. (See “Funding Under the Help America Vote Act,” below.)

Election Assistance Commission. Before HAVA, federal activities relating to election administration were performed by the Office of Election Administration (OEA) of the Federal Election Commission (FEC). Other than the voluntary voting system standards, OEA performed clearinghouse functions and some administrative activities under the National Voter Registration Act (P.L. 103-31). HAVA replaced the OEA with the Election Assistance Commission (EAC [<http://www.eac.gov>]), an independent,

bipartisan federal agency. Members are appointed to four-year terms and may be reappointed once. The act also established two boards, with broad-based state and local membership, and a technical committee, to address aspects of voting system standards and certification, and it provides for technical support and participation by the National Institute of Standards and Technology (NIST, see [<http://vote.nist.gov/>]). The main duties of the EAC include carrying out grant programs, providing for testing and certification of voting systems, studying election issues, and issuing voluntary guidelines for voting systems and guidance for the requirements in the act. The EAC does not have any new rule-making authority and does not enforce HAVA requirements. The act establishes two enforcement processes. The U.S. Attorney General may bring civil action with respect to HAVA requirements, and states, as a condition for receipt of funds, were required to establish administrative grievance procedures to handle complaints from individuals. On January 31, the EAC issued its annual report to Congress for FY2005 (available at [<http://www.eac.gov/docs/EAC%202005%20Annual%20Report.pdf>]).

Standards and Requirements. In the 1980s, the FEC developed voluntary standards for computer-based voting systems, although not for voter registration systems. Most states have now adopted those standards, which were updated in 2002. HAVA codifies the development and regular updating of those standards, which it calls voluntary guidelines. The EAC issued draft guidelines for public comment on June 27, 2005, and adopted the final version December 13. They go into effect in December 2007. For more information, see CRS Report RS21156, *Federal Voting Systems Standards and Guidelines: Congressional Deliberations*; and CRS Report RL33146, *Federal Voluntary Voting System Guidelines: Summary and Analysis of Issues*.

HAVA also establishes federal requirements for voting systems, registration, provisional ballots, and other aspects of election administration. It leaves the methods of implementation to the states but requires the EAC to issue voluntary guidance. See CRS Report RL32685, *Election Reform: The Help America Vote Act and Issues for Congress*.

Congressional Authority. Some observers expressed concern before HAVA over Congress's authority to require states to meet federal election standards. However, the U.S. Constitution gives Congress authority to regulate congressional elections (see CRS Report RL30747, *Congressional Authority to Standardize National Election Procedures*). Prior examples of Congress's use of that authority include, among other laws, the Voting Rights Act (see 42 USC 1973; and CRS Report 95-896, *The Voting Rights Act of 1965, As Amended: Its History and Current Issues*), which prohibits discriminatory voting practices and, and the Voting Accessibility for the Elderly and Handicapped Act, which sets some requirements for elections with respect to accessibility (see 42 USC 1973aa-1a, 6, and ee). Congress can also attach conditions to the receipt of any funding, such as for voting systems or election administration. Such conditions are included in HAVA, for example, with respect to the grievance procedures described above.

Alternative Methods for Voting

Absentee Voting. Voters in many states can request an absentee ballot only for specific reasons that would prevent the voter from casting a ballot in person. But many states now allow any voter to request such a ballot, sometimes called "no fault" absentee voting. Oregon conducts its elections entirely by mail — all registered voters receive their ballots through the Postal Service — and the percentage of votes cast via absentee ballot

has increased in other states, especially Washington and California, over the past several elections. Some observers have expressed concerns that absentee voting is more vulnerable to certain kinds of fraud than is balloting at the polling place, but the trend toward increased absentee voting is expected to continue.

Early Voting. In some states, voters may cast a ballot in person before election day through an early voting program. There are many approaches, and the number of states using early voting is growing, with most states now having some form of it. Some observers have criticized early voting as distorting to the electoral process and being open to certain kinds of fraud and abuse. Proponents argue that early voting can increase turnout and lessen the risk of certain kinds of distortions.

Internet voting. The Arizona Democratic party conducted a primary in 2000 using both the Internet and traditional polling places. In the November 2000 election, the Defense Department conducted a small pilot program in which voters requested and submitted ballots via the Internet; the experiment was slated to be repeated on a larger scale in 2004 but was cancelled, largely because of security concerns. Although interest has grown, Internet voting raises concerns about voter identification, ballot secrecy, risk of cyberattack, and access for all potential voters. It is unlikely to be widely adopted until such problems are resolved. HAVA requires a study on this issue.

Funding Under the Help America Vote Act

HAVA established several grant programs (see table below for authorized amounts):

- *Election Administration Improvements.* Provided expedited, one-time formula payments for general election administration improvements to states that applied, with a \$5 million minimum combined payment per state for this and the replacement program below. Administered by General Services Administration (GSA). (Sec. 101.)
- *Replacement of Punchcard and Lever Machine Systems.* Provided expedited, one-time formula payments to replace punchcard systems and lever machines in qualifying states, with a \$5 million minimum combined payment per state for this and the improvements program above. Administered by GSA. (Sec. 102.)
- *Payments to Meet Election Requirements.* Provides annual formula payments to states to meet the act's requirements. Requires a 5% match and submission of a state plan. Administered by the Election Assistance Commission (EAC) created in the act (see below). (Sec. 251-258.)
- *Payments to Assure Accessibility.* Provides payments to states to make polling places accessible to persons with disabilities. Requires application. Administered by Department of Health and Human Services (HHS). (Sec. 265-265.)
- *Payments for Protection and Advocacy Systems.* Provides payments to state protection and advocacy systems to ensure electoral participation by persons with disabilities. Requires application. Administered by HHS. (Sec. 291-292.)
- *Grants for Research and Pilot Programs.* Provides grants for research to improve voting technology (Sec. 271-273) and for pilot programs to test

new voting technology (Sec. 281-283). Requires application. Administered by EAC.

- *Student Programs.* Establishes three programs, one to recruit college students as pollworkers (Sec. 501-503), one to recruit high school students (Sec. 601), and one to provide grants for the National Student and Parent Mock Election (Sec. 295-296).

Help America Vote Act (HAVA) Funding

Program	Authorization (\$millions) per Fiscal Year					Actual FY03-06
	2003	2004	2005	2006	Total	Total
Election Administration Improvement	325.0				325.0	325.0
Punchcard/Lever Machine Replacement	325.0				325.0	325.0
Election Requirements	1,400.0	1,000.0	600.0		3,000.0	2,328.3
Accessibility	50.0	25.0	25.0		100.0	44.0
Protection and Advocacy	10.0	10.0	10.0	10.0	40.0+	16.9
Research	20.0				20.0	
Pilot Programs	10.0				10.0	
College Program	5.0	a	a	a	5.0+	2.4
High School Program	5.0	a	a	a	5.0+	2.2
Mock Election	0.2	a	a	a	0.2+	0.4
EAC	10.0	10.0	10.0		30.0	31.8
Total	2,160.2	1,045.0	645.0	10.0	3,860.2+	3,076.0

a: sums necessary.

+: amount shown plus sums necessary for subsequent years.

Appropriations. The **FY2003** omnibus appropriations bill (H.J.Res. 2, H.Rept. 108-10, P.L. 108-7), signed into law on February 20, 2003, contained \$1.5 billion for election reform programs authorized by HAVA, including \$650 million combined for the election administration improvement and voting system replacement payments to be administered by GSA (with no specific allocation designated for either program and a maximum of \$500,000 for administrative costs). GSA disbursed all of these funds to states in June 2003. All states and territories received payments for election administration improvements, based on a formula using each state's voting age population. Payments for the replacement of punch card and lever voting systems were made to all states that applied for the program. Also included were \$830 million for requirements grants (with a maximum of 0.1% to be paid to any territory), and \$20 million for other programs — \$13 million for accessibility grants, \$2 million for protection and advocacy programs, \$1.5 million each for the college and high school programs, and \$2 million for the EAC. P.L. 108-7 also included \$15 million for one-time payments to certain states that had obtained optical scan or electronic voting systems prior to the November 2000 election.

The President's budget request for **FY2004** included \$500 million, one-half the amount authorized, to fund EAC requirements grants and administration. No funds were specifically requested for the other programs described above. The final omnibus

appropriations bill, H.R. 2673, signed into law on January 23, 2004 (P.L. 108-199), contained just over \$1.5 billion for election reform, including \$1.0 billion for requirements payments, \$500 million for election reform programs, \$10 million for accessibility grants, \$5 million for protection and advocacy systems, and \$1.2 million for the EAC.

For **FY2005**, the President's budget request included \$65 million for election reform, of which \$40 million was additional funding for requirements grants and \$10 million was for EAC administrative expenses. The request also included \$5 million for protection and advocacy programs and \$10 million for accessibility grants. The House Transportation and Treasury Appropriations Subcommittee mark-up included an additional \$5 million for the EAC. The omnibus appropriations bill for FY2005, H.R. 4818 was signed into law on December 8, 2004 and included \$14 million for the EAC, of which \$2.8 million was to be transferred to the National Institute of Standards and Technology, and \$15 million for disability voting access, with \$5 million of that amount to apply to protection and advocacy systems. Also included was \$200,000 for the student parent mock election program and \$200,000 for the Help America Vote College Program.

The President's **FY2006** budget request included \$17.6 million for the EAC (with \$2.8 million for NIST), as well as \$5 million for protection and advocacy programs and \$9.9 million for accessibility grants administered by HHS. The House-passed appropriations bills included \$15.9 million for the EAC, with \$2.8 million for NIST (H.R. 3058), and the administration-requested amounts for HHS (H.R. 3010). The Senate version of H.R. 3058 included \$13.9 million for the EAC, with \$4 million for NIST. The final version (P.L. 109-115) contained \$14.2 million, including \$2.8 million for NIST, with \$250,000 "encouraged" to be spent on the Help America Vote College Program. The Senate version of H.R. 3010 increased funding for HHS programs to \$13.5 and \$8.6 million, respectively; the enacted version (P.L. 109-149) contained \$11 and \$4.9 million.

On February 9, the Senate approved S. 2166, which would provide \$50 million to states to restore or replace voting equipment and materials damaged by Hurricanes Katrina or Rita. The bill was referred to the House Administration Committee on February 14. A similar amendment, providing \$30 million, was attached by the Senate to H.R. 4939, the Emergency Supplemental Appropriations Act, but it did not survive conference.

The President's **FY2007** budget request included \$16.9 million for the EAC (with \$5 million for NIST), as well as \$4.83 million for protection and advocacy programs and \$10.89 million for accessibility grants administered by HHS. The House-passed appropriations bills included \$16.91 million for the EAC, with \$4.91 million for NIST (H.R. 5576) and \$250,000 "urged" to be expended on the college program, and the administration-requested amounts for HHS (H.R. 5647).

State Implementation of the Help America Vote Act

With the publication of state plans in the *Federal Register* on March 24, 2004, states and territories were eligible to receive \$2.3 billion in federal requirements payments, following a 45-day public comment period and filing of a certification with the EAC. The \$2.32 billion includes funds appropriated in FY2003 and FY2004 which could not be allocated until establishment of the EAC and publication of the state plans. As of December 2005, \$2.32 billion in EAC-approved requirements payments had been distributed.